

REMARKS

This Amendment is submitted in response to the Official Action of January 13, 2003. Reconsideration and allowance of Claims 1-22 remaining in the application in view of the foregoing amendments and these accompanying remarks are respectfully requested.

The specification has been amended to correct certain typographical errors and a new Figure 4 has been prepared to illustrate the claimed interconnection of the switches 56, 58 and 60 with the solenoid valves 90 controlling the forward and reverse movement of the floor stripping machine. The details of Figure 4 find support in the specification, as filed, at page 7, lines 9 through 18, and in claim 14 of the application as filed. No new matter has been added. A formal drawing will be submitted upon indication of approval of the informal drawing submitted herewith.

Concerning the rejection on the merits, claims 1-22 stand rejected under 35 U.S.C. §103 based upon the combination of applicant's earlier U.S. Patent 4,162,809 (the Anderson '809 patent) in view of U.S. Patent 5,426, 805 to Fisher (the Fisher '805 patent). It is the Examiner's contention that it would have been obvious to persons skilled in the art at the time the invention defined by applicant's claims was made to adapt the hydraulic drive as taught in the Fisher '805 patent to the wheel assembly described in the Anderson '809 patent.

Independent claims 1, 7 and 19 have now been amended so as to patentably define over the foregoing combination of references. Specifically, the claims have been amended to recite that the hydraulic motor that is used to drive the wheels is mounted on the main body or frame at a location that is offset from the axle of the drive wheels. This limitation is not taught in either of the cited references. As is set forth at MPEP 2143.03, to establish *prima facie* obviousness of a claimed invention, all of the claim limitations must be taught or suggested by the prior art.

Submitted herewith is a Supplemental Declaration Under 37 C.F.R. §1.132 by the inventor which makes it clear that having the hydraulic motor offset from the axle of the drive wheels is not merely a "distinction without a difference". In paragraph 7.(b) of his Declaration, the inventor states the necessity of having smaller diameter wheels on floor

strippers of the type described and claimed. Placement of a hydraulic motor in a through-axle configuration, such as described in the Fisher '805 patent, if it is to move a 340 lb. floor stripper along the floor surface, would typically have a radius of about five inches. Thus, the axle must be at least several inches higher than the radius of the hydraulic motor to provide a necessary clearance to prevent interference with the carpet segment being stripped by the oscillating cutting head. This mandates large size wheels which would adversely impact the angle of attack of the cutting blade to the floor surface. As pointed out by Mr. Anderson in his Declaration, it is important to minimize wheel diameter in order to have sufficient torque to drive the wheels and to maintain the angle of inclination of the cutting blade at a low value

By offsetting the hydraulic motor 34 from the drive axle 16 as shown in Figure 2 of the present application, a small diameter sprocket on the axle 16 can be used, allowing the wheels 14 to be of a significantly smaller diameter than would be possible if the hydraulic motor were mounted in-line in the axle as disclosed in the Fisher '805 patent. The offset placement also leads to a narrower profile to the floor stripper which is advantageous, as explained in the accompanying Declaration.

The Supplemental Declaration Under 37 C.F.R. §1.132 accompanying the present Amendment also supplements the Declaration earlier submitted to show commercial success, long-felt need and especially the failure of others to meet that need, all factors that must be considered in assessing obviousness. The Examiner is respectfully requested to follow the directive set out at MPEP 2144.08, Part III, in light of the entire record, including applicant's Rule 132 Declaration dated December 17, 2002, and the further Rule 132 Declaration submitted herewith.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings. It is submitted that there is nothing in either of the cited references to provide a motivation to offset the hydraulic motor from the axle of the drive wheels as in applicant's invention. Second, there must be a reasonable expectation of success. As Mr. Anderson points out in his Declaration, combining the teachings of the two cited references would result in a design that would

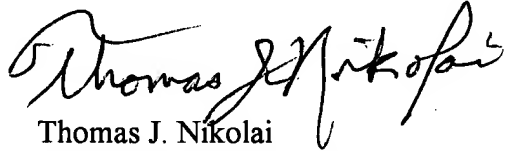
be inoperable because of the resulting reduced torque on the drive wheels and the necessarily large angle of the cutting blade to the floor when large diameter wheels are mandated by the presence of the hydraulic motor in a through-axle configuration. Finally, the prior art reference or references when combined must teach or suggest all the claim limitations. The teachings or suggestions to make the claim combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. See MPEP 2142.

In paragraph 9 of Mr. Anderson's Supplemental Declaration Under 37 C.F.R. §1.132, there is set out a number of fact statements relating to the commercial success, long-felt need and failure of others to meet this need. Also, following the introduction of the National Carpet Models 5280 and 6280 self-propelled walk-behind floor stripping machines, Wolff GmbH and its U.S. distributor, Sinclair, have lost over \$3,500,000 in sales to National Carpet. Moreover, as the Declaration points out, the commercial success is due directly to the superiority of the hydraulic wheel drive where the hydraulic motor is at a location that is offset from the axis of the wheels. The performance advantages include, but may not be limited to, a narrow machine profile, improved maneuverability, simplified maintenance and, most importantly, the ability to maintain a low angle of attack between the machine's oscillating cutting blade and the floor. The greater power and efficiency resulting from the claimed configuration thus ties directly to the commercial success that the machine has enjoyed during the relatively short time it has been on the market.

By narrowing the scope of independent claims 1, 7 and 19 to recite the offset location of the hydraulic motor, those claims are neither anticipated nor rendered obvious by the prior art of record. All of the claims depending therefrom are also now allowable. Hence, an early issuance of a Notice of Allowance is respectfully requested.

Respectfully submitted,

NIKOLAI & MERSEREAU, P.A.

A handwritten signature in black ink, appearing to read "Thomas J. Nikolai", written in a cursive style.

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